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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/060,719	02/22/2002	Guillaume Rhadeau-Dumas	2-1032-189	4387
<div>#03      7590      05/25/2004</div> <div>STURM &amp; FIX LLP 206 SIXTH AVENUE SUITE 1213 DES MOINES, IA 50309-4076</div> <div>EXAMINER BECKER, BREW E</div> <div>ART UNIT      PAPER NUMBER</div> <div>1761</div>				

DATE MAILED: 05/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.	Applicant(s)	
10/080,719	RIBADEAU-DUMAS, GUILLAUME	
Examiner	Art Unit	
Drew E Becker	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.135(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 11 May 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) 6-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☒ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of group I in the response of May 11, 2004 is acknowledged. The traversal is on the ground(s) that the other groups would not require a separate search. This is not found persuasive because the three groups each have separate classifications and are separate types of inventions.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 6-12 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected groups, there being no allowable generic or linking claim.

### ***Specification***

3. The abstract of the disclosure is objected to because it contains multiple paragraphs. Correction is required. See MPEP § 608.01(b).

4. The disclosure is objected to because of the following informalities: the specification lacks section headings such as "Summary of the Invention".

Appropriate correction is required.

***Claim Objections***

5. Claims 4-5 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend from another multiple dependent claim. See MPEP § 608.01(n).

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:
- The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
7. Claims 3-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
8. Claim 3 recites "the high molecular weight polysaccharide is chosen from the group consisting of... , a reducing sugar content of less than 20%, a polydispersity value of less than 5 and a number-average molecular mass  $M_n$  at most equal to 4500 g/mol, alone or as a mixture". It is not clear whether these limitations stand alone, describe one of the other choices, or describe the product as a whole.

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 3-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Hartigan et al [Pat. No. 5,709,896].

Hartigan et al teach a method of coating candy with a syrup comprising maltitol (column 3, line 58), microcrystalline cellulose (column 1, line 40), and 0-20% fat (column 1, line 66). The recitation "for coating sugar-free boiled sweets" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hartigan et al as applied above, in view of Cherukuri et al [Pat. No. 4,317,838].

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Hartigan et al teach the above mentioned concepts. Hartigan et al do not recite magnesium silicate, or talc. Cherukuri et al teach a method of coating candy with talc (column 3, line 36). It would have been obvious to one of ordinary skill in the art to incorporate the talc of Cherukuri et al into the invention of Hartigan et al since both are directed to methods of coating candy, since Cherukuri et al teach that the talc acted as an anti-sticking agent (column 3, line 36), and since the candy of Hartigan et al would have been packaged and thus required some means to prevent it from sticking to the wrapper.

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Rusch et al [Pat. No. 3,769,438] teach a method of coating foods with polyols, fat, and polysaccharides.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Thur. 8am-5pm and every other Fri. 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Drew E Becker  
Primary Examiner  
Art Unit 1761

5-21-04